

Notice of Allowability

Application No.

10/636,001

Examiner

Nyeemah Grazier

Applicant(s)

STROBEL ET AL.

Art Unit

1626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to July 6, 2006.
2. ☒ The allowed claim(s) is/are 1, 4-7, and 9 (renumbered as 1-6).
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

DETAILED ACTION
NOTICE OF ALLOWANCE

I. ACTION SUMMARY

The Amendments to the Claims and Remarks submitted to the Office on July 6, 2006 has been fully considered and will be the basis of the following Notice of Allowance.

Claims 1, 4-7, and 9 are currently pending and are in condition for allowance. Claims 2 and 3 have been canceled. Claims 7, 8 and 9, previously withdrawn, have been rejoined and fully examined for patentability pursuant to M.P.E.P. § 821.04(b). Claim 7 has been amended as a composition claim. Claim 8 has been canceled by authorized examiner's amendment and claim 9 has been amended by Examiner's Amendment.

II. RESPONSE TO AMENDMENTS

A. Election: Response to Election (Remarks September 29, 2005)

The restriction requirement has been deemed proper and is therefore made FINAL.

Rejoinder

It should be noted that Claims 1, 4-7 are directed to an allowable product. Pursuant to the procedures set forth in MPEP § 821.04(B), claims 9, directed to the process of using the allowable product, previously withdrawn from consideration as a result of a restriction requirement, are hereby rejoined and fully examined for patentability under 37 CFR 1.104.

Because all claims previously withdrawn from consideration under 37 CFR 1.142 have been rejoined, the restriction requirement between Groups I-III as set forth in the Office action mailed on October 6, 2005 is hereby withdrawn. In view of the withdrawal of the restriction

Art Unit: 1626

requirement as to the rejoined inventions, applicant(s) are advised that if any claims including all the limitations of an allowable product claim or rejoined process claim are presented in a continuation or divisional application, such claims may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once the restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

B. *Priority*

Applicant's arguments, see Remarks, filed July 6, 2006, with respect to Priority under 35 USC 119 (a-d) have been fully considered and are persuasive. The certified priority documents are of record.

C. *Claim Rejections under 35 U.S.C. §112, 2nd Rejection*

Applicant's arguments, see Remarks, filed July 6, 2006, with respect to the 112,2nd Rejection have been fully considered and are persuasive because the claim has been sufficiently amended. Thus, the rejection of claim 7 has been obviated.

D. *Claim Rejections under 35 USC §102(b)*

Applicant's arguments, see Remarks, filed July 6, 2006, with respect to rejections under 35 USC 102(b) have been fully considered and are persuasive because the claims have been amended. The rejections of claims 1, 2, 4, 6 and 7 have been obviated.

E. *Claim Rejections under 35 USC §103(a)*

Applicant's arguments, see Remarks, filed July 6, 2006, with respect to rejections under 35 USC 103(a) have been fully considered and are persuasive because the claims have been amended. The rejections of claims 1, 2, and 4-7 have been obviated.

F. *Claim Objections*

Applicant's arguments, see Remarks, filed July 6, 2006, with respect to the objections to claims 1, 2, and 4-7 have been considered and are persuasive. In light of the amendment, the objections have been obviated.

III. EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Jiang Lin, Esquire on August 31, 2006.

The application has been amended as follows:

1. Cancel claim 2.
2. Cancel claim 8.

Art Unit: 1626

3. In claim 9, INSERT --- of treating --- before “stable or unstable angina pectoris” on page 12, line 3; INSERT ---, wherein said method is mediated by the expression of endothelial nitric oxide synthase, --- before “, comprising administering” on p. 12, line 11.

4. In claim 9, DELETE “for treatment of cardiovascular disease,” on p. 12, line 3; DELETE “restenosis, endothel damage after PTCA, hypertension, ” on p. 12, line 6; DELETE “chronic glomerulonephritis, erectile dysfunction,” ; DELETE “diabetes, diabetes complications, nephropathy, retinopathy, angiogenesis, asthma bronchiale, chronic renal failure, cirrhosis of the liver, osteoporosis, restricted memory performance or a restricted ability to learn, or for the lowering of cardiovascular risk of postmenopausal women or of women taking contraceptives,” on page. 12, lines 8-11.

IV. REASONS FOR ALLOWANCE

The following is an examiner's statement of reasons for allowance: The instant invention is drawn to acylated arylcycloalkylamines and their pharmaceutical uses. The instant invention appears to be free of the art of record. The closest prior art reference of record is Atkinson et al., US 2005/049237 A1. The instant invention is not anticipated nor rendered obvious by the prior art of record because the instant invention is drawn specifically to oxazolyl, thiazolyl or pyrrolyl compounds while the prior art of record is drawn to pyrazolyl compounds.

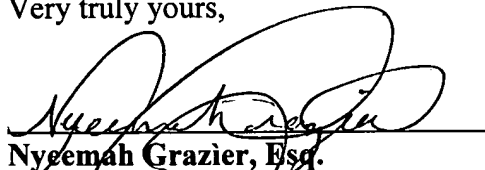
Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled “Comments on Statement of Reasons for Allowance.”

V. CONCLUSION

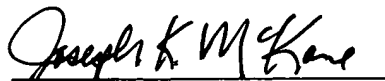
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nyeemah Grazier whose telephone number is (571) 272-8781. The examiner can normally be reached on Monday through Thursday and every other Friday from 8:30 a.m. - 6:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph K. McKane, can be reached on (571) 272 - 0699. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Very truly yours,



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